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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
The Development of a National Framework to) RM-9474
Detect and Deter Backsliding to Ensure)
Continued Bell Operating Company Compliance)
with Section 271 of the Communications Act)
Once In-region InterLATA Relief is Obtained)

COMMENTS OF BELL SOUTH CORPORATION
IN OPPOSITION TO PETITION FOR EXPEDITED RULEMAKING

BELL SOUTH CORPORATION

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BellSouth Corporation, for itself and its affiliated companies (BellSouth), submits these Comments in opposition to Allegiance's petition for an expedited rulemaking. That petition seeks to have the Commission replot ground already covered in the Commission's *Performance Measures* rulemaking. The rest has been covered in other Commission and state commission proceedings. As such, the petition should be rejected as duplicative, and Allegiance's comments rejected as out-of-time and improperly filed. The Commission and, for that matter, the industry as a whole would be better served to avoid duplicative rulemakings.

I. THERE IS NO FACTUAL BASIS FOR ALLEGIANCE'S PETITION

Allegiance's claimed basis for its petition is a totally unsupported "expectation" that Bell companies will "backslide" on their legal obligations to CLECs once they receive long distance authority under section 271. *Petition* at 9. Allegiance reasons that the Commission should consider erecting another national regulatory framework on this flimsy basis. This framework would be layered on to Bell companies that have obtained long distance relief under section 271.¹

There is no factual basis for believing that what even Allegiance can only argue is its "expectation" will come to pass, and thus there is no basis to grant the petition. There is a factual basis for BellSouth's commitments to open its markets, backed up by BellSouth's investment of hundreds of millions dollars to put together staff and systems to meet CLEC marketplace needs. BellSouth's Service Quality Measurements provide an

¹ In a bald attempt to add to section 271's Competitive Checklist and further delay Bell company entry into in-region long distance, Allegiance argues that the Commission must impose these additional regulations before a Bell company could obtain long distance authority under section 271. *Petition* at 3-4.

extremely detailed CLEC-by-CLEC scorecard for tracking the quality of BellSouth's service. This scorecard demonstrates and will continue to demonstrate that BellSouth meets its CLEC obligations. Allegiance does not begin to address how BellSouth, or other Bell companies with similar quality measures, could "backslide" without detection. Detection would bring with it the inevitable involvement of state commissions, this Commission and the courts.

II. THE GREATEST PART OF THE RULEMAKING SOUGHT BY ALLEGIANCE WOULD DUPLICATE THE COMMISSION'S CURRENT PERFORMANCE MEASUREMENTS RULEMAKING

Allegiance puts forward no reason to believe that the additional regulatory regime it seeks to create for Bell companies that have received long distance authority under section 271 would serve a useful purpose. Certainly there is no need for layering on yet another Commission imposed "national framework," especially one that somehow applies peculiarly to Bell companies that have obtained long distance relief. This Commission and the states have invested considerable resources in defining the market-opening terms of sections 251 and 252. The measures Allegiance now seeks have been addressed in proceedings conducted under those sections. Allegiance does not acknowledge this or provide any reason suggesting that prior judgments and reasoning should be reversed. Allegiance's petition would involve the Commission and the industry in wasteful duplicative proceedings, and should be rejected out-of-hand.

The meat of Allegiance's petition would have this Commission begin a rulemaking process addressing parity metrics, standards and penalties. Any such

At a minimum, establishing additional pre-requisites to Bell company entry into in-region long distance would violate section 271(d)(4), which prohibits additions to the Competitive Checklist.

rulemaking would duplicate the Commission's on-going Performance Measures proceeding.² In that proceeding, the Commission proposed dozens of measures broken down into scores of performance reports. Those reports would provide details on pre-ordering, ordering and provisioning, repair and maintenance, billing and interconnection, among others, generally broken down regionally by CLEC. The performance reports under the Commission's proposed measures would yield millions of pieces of data on Bell company performance. Over thirty companies filed comments in that proceeding, including BellSouth. Although Allegiance filed comments in the *Performance Measures* proceeding, it ignores that proceeding here.

In that rulemaking, the Commission sensibly focused its efforts on arriving first at appropriate measures and reports. It rejected calls, which Allegiance repeats here, to create standards and penalties until the industry had in place a useful set of performance measures and had gathered meaningful performance information. The Commission noted that "any model performance standards should be grounded in historical experience to ensure that such standards are fair and reasonable" and that it "would be premature for us to develop standards at this point." *Performance Measures NPRM* at ¶ 125. Similarly, the Commission rejected calls for it to establish technical OSS standards, relying instead on various industry standards bodies. *Performance Measures NPRM* at ¶ 127. Finally, the Commission rejected calls to establish enforcement mechanisms since "our focus, at this initial stage, is on issuing guidelines for performance measurement and reporting procedures." *Performance Measures NPRM* at ¶ 130.

² *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, Notice of Proposed Rulemaking, CC Dkt. No. 98-56, FCC 98-72, 13 FCC Rcd 12817 (1998) ("*Performance Measures NPRM*").

Allegiance's petition argues that the Commission should reverse these judgments, but does not provide any reason the Commission should do so. Allegiance offers no explanation as to how a second, duplicative proceeding could make sense. Allegiance's call for the development of parity metrics is a vague, general and unfocused request to repeat the Commission's current proceeding, a call that ignores substantial prior efforts.³ Its proposal to develop standards and penalties puts the cart before the horse, directly conflicting with the Commission's commonsense view that experience with performance reporting is a necessary prerequisite to developing enforcement mechanisms. Other than a single reference to the on-going Performance Measures proceeding, Allegiance simply ignores that proceeding while urging the Commission to begin a duplicative and conflicting process.⁴

III. ALLEGIANCE'S REQUEST FOR RULEMAKING ON A GRAB BAG OF OTHER PROPOSALS IS GENERALLY DUPLICATIVE AND SHOULD BE REJECTED

Allegiance tacks a grab bag of other inappropriate proposals on to its calls for measurements, standards and penalties. Some of these proposals have already been rejected by state commissions. All are ill-advised.

Symptomatic of Allegiance's overall approach is its position that the Commission can grant section 271 relief only if it has measures in place to "consider the resource level that BOCs direct to wholesale activities for interconnection, UNEs, and resale....

³ For example, Allegiance's recommendation that the Commission adopt the New York and Texas Commission metrics ignores the efforts of other Commissions (in BellSouth's region, the Georgia and Louisiana Commissions have been particularly active), and proposes no way to address differences in Bell company system capabilities and resulting measures and reports.

⁴ Allegiance mentions the on-going Performance Measures proceeding only once, in the context of the supposed need for the Commission to set national technical specifications for OSS. *Petition* at p. 19.

Detailed review of the level of support that BOCs provide to their wholesale account teams is critically important." *Petition* at 22. Allegiance's "critically important" issues include whether Bell company wholesale personnel have the right pagers and cell phones, what the procedures for sick leave coverage are and whether the right voice mail messages will be left on the absent employee's phone.⁵

Obviously, these are anything but "critically important" issues, and Commission detailed review would involve the Commission in a morass of micro-management completely at odds with the Congress's "pro-competitive deregulatory" intent for the Act. Performance measures as thorough and complete as BellSouth's Service Quality Measures provide tremendous detail on the outcome of BellSouth's service provision to CLECs. There can be no sensible need for FCC regulation of the processes and resources BellSouth and its employees devote to providing these services as long as the outcomes are measured. FCC micro-management of these internal processes will create only inefficiencies and higher costs. Proposals for governmentally set national standards in areas like this lack any credibility and must be rejected.

A second Allegiance proposal is that the Commission should now begin reading Competitive Checklist item 3 to require Bell companies to provide inside wiring and facilities in multi-tenant buildings.⁶ *Petition* at 20-21. The Commission has already defined the requirements of this part of the Checklist, and BellSouth is already in

Allegiance does not dispute the Commission's conclusion that these matters are best left to industry standards bodies. *Performance Measures NPRM* at ¶ 127.

⁵ Allegiance cites to these measures in Bell Atlantic's Pre-Filing Statement. *Petition* at 22.

⁶ Allegiance's request to designate inside wire as unbundled network elements could only be considered under the Supreme Court's strictures regarding the proper application of the necessary and impair test. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826 (U.S. Jan 25, 1999).

compliance with this provision.⁷ Again, Allegiance simply ignores a number of separate Commission proceedings addressing inside wire in its quest to create a new entitlement.⁸ Allegiance's collocation proposals are similarly already being addressed before this Commission and the states.⁹

Finally, Allegiance calls for a rulemaking concerning procedures under section 271 for resolving complaints. *Petition* at 21-24. Section 271(d)(6)(B) provides for Commission action on complaints within ninety days of filing, unless the parties agree otherwise. Allegiance suggests that the Commission's new "Rocket Docket" may provide a procedural model. *Petition* at 23. However, the Rocket Docket does not provide for Commission resolution of complaints in ninety days, as the default provision of section 271(d)(6) require. And, as BellSouth has made clear before, imposition of a ninety day deadline may well run afoul of the Due Process clause.¹⁰ Any Commission rulemaking on this subject should be commenced separately, at the Commission's own initiative. That rulemaking will need to establish extensive pre-filing procedures that a complainant must meet as a pre-requisite to filing a complaint under section 271(d)(6)(B). These necessary pre-filing procedures are not provided for in the Commission's "Rocket Docket."

⁷ *In the Matter of Application of BellSouth Corp. et al, for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, CC Dkt. No. 98-121, FCC 98-271 (rel. Oct. 13, 1998) at ¶ 174.

⁸ *See, generally, Telecommunications Services Inside Wiring, Customer Premises Equipment and Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Second Further Notice of Proposed Rulemaking, CS Docket No. 95-184, FCC 97-376 (rel. October 17, 1997).

⁹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt No. 98-147, FCC 98-188, Memorandum Opinion, Order and Notice of Proposed Rulemaking (rel Aug. 7, 1998). All of the state commissions in BellSouth's region have invested substantial resources in evaluating collocation options.

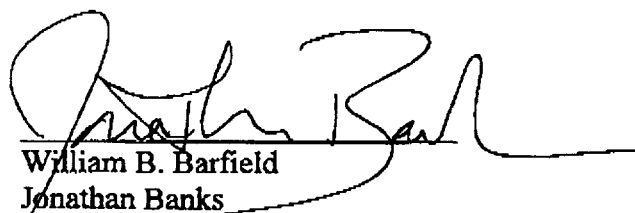
¹⁰ *See, BellSouth Comments, In the Matter of Implementation of the Telecommunications Act of 1996, and Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Dkt. 96-238.

IV. CONCLUSION

For the reasons set out above, BellSouth respectfully requests that the Commission deny Allegiance's petition for rulemaking.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

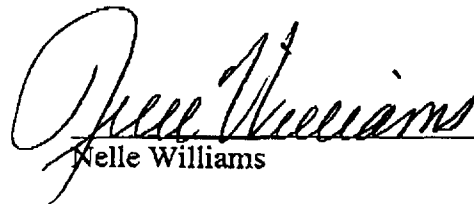
I hereby certify that I have this 8th day of March, 1999 served the following parties to this action with a copy of the foregoing COMMENTS OF BELLSOUTH CORPORATION, by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties at the addresses shown below.

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